

IBLA 83-765 Decided May 28, 1985

Appeal from determination of the Area Director, Bureau of Indian Affairs, to issue a certificate of ineligibility to Wisenak, Inc., for status as a Native group. F-19749.

Affirmed.

1. Alaska Native Claims Settlement Act: Conveyance: Native Groups

A determination by the Bureau of Indian Affairs to deny a Native corporation status as a Native group because members of the group did not constitute a majority of the residents of the locality on Apr. 1, 1970, will be affirmed where it is based on a thorough field investigation, supported by numerous affidavits, and meets the criteria of 43 CFR 2653.6(a)(4).

2. Regulations: Force and Effect as Law -- Regulations: Validity

The Board of Land Appeals has no authority to declare invalid duly promulgated regulations of this Department. Such regulations have the force and effect of law and are binding on the Department.

APPEARANCES: Robert M. Goldberg, Esq., Anchorage, Alaska, for appellant.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

On December 18, 1971, Congress passed the Alaska Native Claims Settlement Act (ANCSA), 85 Stat. 688, 43 U.S.C. §§ 1601-1627 (1982), to provide a "fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims." 43 U.S.C. § 1601(a) (1982). As part of the claims settlement, 43 U.S.C. § 1613(h)(2) (1982) (section 14(h)(2) of ANCSA) authorizes the Secretary of the Interior to "withdraw and convey to a Native group that does not qualify as a Native village, if it incorporates under the laws of Alaska, title to the surface estate in not more than 23,040 acres surrounding the Native group's locality" from "2 million acres of unreserved and unappropriated public lands located

outside of the areas withdrawn by sections 1610 and 1615 of this title." "Native group" is defined in 43 U.S.C. § 1602(d) (1982) as "any tribe, band, clan, village, community, or village association of Natives in Alaska composed of less than twenty-five Natives, who comprise a majority of the residents of the locality," and is distinguished from a "Native village" on the basis that the group has insufficient numbers to qualify as a village. Cf. 43 U.S.C. § 1602(c) and (d) (1982). The Secretary has promulgated regulations regarding land selection rights of Alaska Natives incorporated pursuant to section 14(h)(2) of ANCSA. Among other things, the regulations give an eligible Native group the right to select up to 7,680 acres of land. 43 CFR 2653.6(b). A Native group is "composed of less than 25, but more than 3 Natives." 43 CFR 2653.0-5(c).

The Wisenak Corporation (the Group) filed Native group application F-19749 with the Alaska State Office, Bureau of Land Management (BLM), on December 17, 1973, pursuant to section 14(h)(2) of ANCSA, for 7,680 acres of land around the Wiseman, Alaska area. The Group claims this area as its Native group locality.

A field investigation of the Group's locality was conducted on November 2 and 3, 1981, by two Bureau of Indian Affairs (BIA) ANCSA realty specialists. Their findings are included in a Report of Investigation for Wisenak, Inc., BLM F-19749.

By decision dated April 28, 1983, the Area Director, BIA, found the Group to be an ineligible Native group because the members thereof did not constitute a majority of the residents of the locality where the Group resided on April 1, 1970, as required by 43 CFR 2653.6(a)(4).

In its statement of reasons for appeal (SOR), appellant asserts that "it is still not clear whether Wiseman, Inc., or Wisenak is the appropriate entity for the Native villagers"; that BIA incorrectly tabulated Natives and non-Natives and that its conclusion as to lack of majority was based on an incorrect number of affidavits; that BIA's questions concerning residency were confusing to Natives; and that the regulations pursuant to which the ineligibility determination was made are invalid.

[1] BIA's report clearly details the findings of fact made by the investigators. With respect to the entities known as Wiseman, Inc., and Wisenak, Inc., the report states in pertinent part:

There are 45 members enrolled to Wiseman, Inc., a village corporation, as evidenced by the copy of the Alaska Native Enrollment for Wiseman, dated August 11, 1982 (Exhibit 2, Appendix D). Alaska Native Enrollment has no enrollment records for Wisenak, Inc.

* * * * *

Wisenak, Inc., claims the Wiseman, Alaska, area as their Native group locality.

* * * * *

Interviews were conducted with the following residents at the time of the field investigation:

Ross Brockman
 Andrew Mickavich
 Harry Leonard
 Rick Reakoff

These individuals proved to be knowledgeable of population patterns in Wiseman during 1970. Transcripts of these interviews are entered as Exhibit #2, Appendix E. These interviews indicate that Florence Jonas was the only Native that was living in Wiseman in 1970. These interviews also reveal that there was never a majority Native population in Wiseman.

* * * * *

Affidavits were given or sent to each member enrolled to Wiseman, Inc. Of the 45 sent, 24 completed affidavits were returned. Wisenak, Inc., failed to supply its membership to the Bureau of Indian Affairs when requested by the field investigator. In addition to the affidavits taken from the Wiseman, Inc., enrollees, two were collected from people not enrolled to Wiseman, Inc. Refer to Exhibit #2, Appendix E, for the completed affidavits and explanations regarding affidavits which were not obtained.

Of the 26 people who completed and returned an affidavit, only one person, Mamie Boese, responded as having lived in Wiseman in 1970. She is enrolled to Wiseman, Inc. In her affidavit, Mrs. Boese stated that she lived 12 miles from Wiseman.

(Report at 7, 10-11). In addition BIA found that Alaska Native Enrollment showed no enrollment for Wisenak, Inc., that the ANCSA office was unable to determine who constituted the membership of Wisenak, Inc., and that four persons listed as officers for Wisenak, Inc., are actually enrolled to Wiseman, Inc.

We have reviewed the affidavits and exhibits appended to the report and find that they amply support BIA's findings. There is no basis for concluding that the respondents had difficulty with the questions posed by BIA. Appellant has demonstrated no error in BIA's report or in its fact gathering. We conclude that BIA's determination fulfills the criteria of 43 CFR 2653.6(a)(4), and that the certificate of ineligibility was properly issued.

[2] With respect to the validity of agency regulations governing Native group eligibility, we have often held that the Board of Land Appeals has no authority to declare invalid duly promulgated regulations of this

Department. Such regulations have the force and effect of law and are binding on the Board. Chugach Natives, Inc., 80 IBLA 89 (1984); Sam P. Jones, 71 IBLA 42 (1983); Enserch Exploration, Inc., 70 IBLA 25 (1983); Altex Oil Corp., 61 IBLA 270 (1982). 1/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Wm. Philip Horton
Chief Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Will A. Irwin
Administrative Judge.

1/ Complaint dismissed without prejudice in Altex Oil Corp. v. Watt, Civ. No. 82-0424A (D. Utah Oct. 19, 1982).

